

Secretary's Order No.: 2010-A-0007

**RE: Approving Final Amendment to 7 DE Admin. Code 1138,
Emission Standards for Hazardous Air Pollutants for Source Categories,
Section 14.0: "Area Source Miscellaneous Parts or Products
Surface Coating Operations".**

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations". The proposed new Section 14.0 will affect surface coating operations that spray-apply coatings which contain any compounds of cadmium, chromium, lead, manganese or nickel. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart

HHHHHH, as well as existing requirements found in similar area source standards found throughout Regulation 1138.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds. Additionally, many of these compounds, except the manganese compounds, are classified as either known or probable human carcinogens by the EPA. It should be noted that this proposed amendment does not apply to facilities that apply surface coatings to motor vehicles (auto body shops) or mobile equipment, as the Department plans to address these sources in the near future with separate regulatory promulgations.

The Department's Air Quality Management (AQM) Section of the Divisions of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-09. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulation* and held a public hearing on January 5, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the

Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH and provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on January 5, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;

4) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendment does not reflect any substantive change from the proposed regulation Amendment as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended Amendment should be adopted as final regulation Amendments because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA. Moreover, the regulation amendment is well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara
Collin P. O'Mara
Secretary